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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2019/2020

UNL1622 – CONTRACT LAW II

(All Sections/Groups)

10 MARCH 2020

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they read the paper and make rough notes **ONLY** on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 Pages and 4 Questions only.
3. This Question paper consists of 2 sections. Attempt **ONE** question only in **Section A** and all **THREE** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the examination hall **CLEAN** and **ORIGINAL** copy of:
 - i. **Contracts Act 1950 (Act 136)**
 - i. **Specific Relief Act 1950 (Act 137)**
 - ii. **Civil Law Act 1956 (Act 67)**

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

SECTION A: ANSWER ONE QUESTION ONLY**QUESTION 1(a)**

In *Pacific Forest Industries Sdn Bhd v Lin Wen Chih* (2009) 6 MLJ 293:

"The doctrine of frustration is only a special case to discharge a contract by an impossibility of performance after the contract was entered into. A contract is frustrated when subsequent to its formation, a change of circumstances renders the contract legally or physically impossible to perform."

Discuss the following with reference to the position of Common Law and Malaysian Law:

(i) What are the circumstances in which a contract is discharged by frustration?
(15 marks)

(ii) What are the remedies available for the doctrine of frustration?
(10 marks)

(Total: 25 marks)

OR

QUESTION 1(b)

(i) By virtue of s 19 of Contracts Act 1950, agreements entered into under coercion are voidable at the option of the party whose consent was obtained through coercion.

Explain the Malaysian position on coercion with references to the decided cases.
(15 marks)

(ii) Discuss the position of coercion under Common Law with references to the decided cases.

(10 marks)

(Total: 25 marks)

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SECTION B: ANSWER ALL QUESTIONS**QUESTION 2**

Dato' William, a successful businessman in Johor Bahru, planned to build his new bungalow in Kuala Lumpur early year 2018. The idea was established due to his packed schedule and back to back meetings in town with all his suppliers. He met Tukang Low in January 2018 to discuss his project and the price. After the discussion took place, the price of the bungalow was RM 2.5 million. During the discussion, both parties agreed with all terms and conditions including the project will be completed before December 2018.

Somehow on mid of November 2018, Tukang Low informed Dato' William that seven of his workers are not well and hospitalised for a week due to Viral Fever. Therefore, the plan need to be put on hold for a while and will only continue once the workers recovered from their sickness. Dato' William was not happy with the news and still wanted the project to continue with the other five workers who are not affected by Viral Fever. Since the project is almost completed, Dato' William wanted the project to be continued. He wanted to celebrate his Christmas with his family in the new bungalow, or he will not pay the balance of payment, RM 500,000 to Tukang Low.

Advise Tukang Low.

(Total: 25 marks)

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QUESTION 3

Henry Tan executed an agreement with Malek dated 1 April 2017 for the sale of three pieces of land ('the lands') held under in the Mukim and District of Kuala Lumpur. Malek had issued an option for the sale of the land provided that the amount of deposit will be 20% of the purchased price of the sale land. A deposit of RM40,000 was made, leaving a balance of RM160,000 to be paid on the date of completion. One of the clauses in the agreement stated that Malek was to deposit his documents of title with Henry Tan's solicitors upon the execution of the agreement. However, only two titles of the lands were in the possession of Malek and the other title had lost. The application for new titles had been made. Therefore, only two documents of the title were deposited with Henry's solicitor. Malek gave an assurance that he would try his best to get the new titles by the date of completion.

Further, the balance of the purchase price was to be deposited with the Malek's solicitors on or before the 31 July 2017. Upon such deposit being made, Malek was to execute a valid and registrable transfer and deliver vacant possession of the lands to the plaintiffs. The balance of the purchase price to be deposited with Malek's solicitors was to be released to Malek upon registration of the transfer. There was a stipulation in the contract that time wherever mentioned shall be the essence of the contract. The agreement contained the usual clause as regards the forfeiture of the initial deposit in the event of the plaintiffs failing to deposit the balance of the purchase price with the defendant's solicitors.

Meanwhile, Henry Tan decided to enter into an agreement with Isabella on 20 July 2019 to sell the three lands although he has not received the vacant possession of the three lands from Malek. Henry Tan has received a deposit of RM10,000 from Isabella.

On 29 July 2017, Malek did not have all three titles of the lands and was not in the position to give vacant possession to Henry Tan on 31 July 2017. Malek's solicitor requested an extension. However, Henry Tan did not agree to the request of extension of time. Henry intended to repudiate the agreement with Malek and claim for damages for the recovery of the deposit. At the same time, Henry's solicitor has paid the sum of RM160,000 to Malek's solicitor.

Advise Henry Tan and Malek as to what damages, if any, on the claims for breach of contract.

(Total: 25 marks)

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QUESTION 4

Maju Sdn Bhd ("Maju") owned a piece of land at Kuantan. Maju entered into a construction agreement with Kerja Lambat Sdn Bhd ("Kerja Lambat") to build roads and drains on a new piece of land owned by Maju. Maju and Kerja Lambat agreed that the tenure of the agreement was for two years and the contract sum was RM1,500,000. The contract started on 1 January 2017.

At the construction site, problems occurred due to lack of staff and resources on the site of the construction. Some of the workers of Kerja Lambat were lacking in expertise and the progress was plodding. Therefore, the works on the construction site did not proceed according to the schedule in the agreement.

Kerja Lambat had to apply for foreign workers and the cost incurred increased for the construction. Khaidir, Kerja Lambat's manager listed all the additional cost incurred by Kerja Lambat to complete the work at the construction site. It was expected that the construction of the land will be completed on 30 December 2019. However, the application for the foreign workers will only be approved after two months from the application date. At the same time, Kerja Lambat was not satisfied with Maju as the manager, Encik Ahmad kept changing the road's plan even though it had been confirmed in the agreement.

The agreement could not be completed within the stipulated time. Kerja Lambat claimed on quantum meruit basis for work done at the construction site. Maju disputed Kerja Lambat's claim on the grounds that Kerja Lambat failed to prove work done up to the value claimed. Kerja Lambat denied the claim due to the failure to complete the project on time and the inconsistent changes made by Encik Ahmad.

Advised both parties on their legal rights and liabilities.

(Total: 25 marks)

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